IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Group Art Unit 3626	:	
	:	PATENT APPLICATION
Examiner N. Pass	:	
	:	
In re application of	:	**SYSTEM FOR COMMERCIAL**
	:	**FOOD MANAGEMENT**
GENE E. NACEY	:	
	:	Confirmation No. 3458
Serial Nos.: 09/808,423	:	
	:	
Filed: March 14, 2001	:	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pittsburgh, Pennsylvania

June 16, 2010

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

      Applicants have carefully reviewed and considered the Final Office Action mailed on
March 16, 2010, and the cited references. In response to the Final Office Action, Applicants
respectfully request review prior to the filing of an Appeal Brief.

Claim Rejections – 35 USC § 112, First Paragraph

        The Examiner rejected claims 39-75 under 35 U.S.C. § 112, first paragraph for lack of written description.

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REMARKS

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        The Examiner stated that the phrase "establishing a preselected nutritional criteria" in claims 39, 62 and 76 is not supported by the original disclosure. Applicants previously drew the Examiner's attention to page 14, line 14 - page 15, line 4, paragraph [0037] of the published version of the application, for a description of the establishment of predetermined nutritional criteria:

> It is to be understood that the present invention, in accordance with at least one presently preferred embodiment, includes recognizing an authorized user accessing the system remotely, providing at least one suggested menu which meets predetermined nutritional criteria, and providing nutritional information relating to said at least one suggested menu. Together, these may be implemented on at least one general-purpose computer running suitable software programs. These may also be implemented on at least one Integrated Circuit or part of at least one Integrated Circuit. Thus, it is to be understood that the invention may be implemented in hardware, software, or a combination of both.

        The Examiner has neither acknowledged this citation nor offered any explanation as to why these sections of the specification do not support the rejected claims. Instead, the Examiner merely reiterated the rejection from the previous Office Action. In addition, page 10, lines 1-12 provides a description of the establishment of predetermined nutritional criteria:

> Recipe database 16b preferably contains recipes that food service professionals can use, modify or add to. These recipes are preferably categorized for each region of the country where there are noticeable differences in food tastes. Preferably the nutritional value and readings of all completed recipes are verified. Furthermore, it is preferably possible to search the recipes by food/ingredients.

> Master diet type database 16c preferably contains a set of diet types defined by the system proprietor. This creates a standard set of diet types, eliminating variances in diet types among differing facilities or organizations. As part of the initialization process, all food items and recipes are qualified. This is accomplished through evaluating the appropriate items ranging from the nutritional content of each food to the diabetic exchange rates they represent. It is contemplated that as many as 200 to 300 diet types can be established, although a lesser or greater number may also be established.

Claim Rejections – 35 USC § 103(a)

The Examiner rejected claims 39-41 and 44-75 under 35 U.S.C. § 103(a) as being obvious over of Kolawa *et al.*, United States Patent No. 6,370,513 ("Kolawa") in view of Cosentino *et al.*, United States Patent No. 6,290,646 ("Cosentino") and further in view of Petot, *et al.* article: "An artificial intelligence system for computer-assisted menu planning" ("Petot"). Claims 42-43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kolawa, Cosentino, Petot and further in view of Brown, United States Patent No. 6,168,563 ("Brown").

REMARKS

The present claims require that the inventive *system* evaluates nutritional data and establishes preselected nutritional criteria based upon this data. For example, independent claim 39 recites: (1) the database is stored in the memory of a computer-based system; (2) the system utilizes a processor to evaluate and verify nutritional data; and (3) the processor creates menu sets incorporating the nutritional data. In addition, independent claim 62 recites a system comprising a computer-implemented arrangement for establishing preselected nutritional criteria. This system then suggests menu sets in accordance with said preselected nutritional criteria.

All of the rejections are based upon Kolawa, which is directed to an automated recommendation system that provides recommendations based on user preferences, such as taste. The Examiner acknowledges that, in contrast to Applicants' invention, Kolawa does not teach providing a remote link to food service professionals, collecting information from food service professionals, or suggesting menu sets to the food service professionals. Kolawa therefore neither teaches nor suggests a system which evaluates nutritional data and establishes preselected nutritional criteria based upon this data. The automated recommendation system of Kolawa simply offers suggestions based upon criteria and feedback provided by the user. The system of Kolawa does not evaluate the inputted data based upon preselected criteria, as recited in claims 39 and 62. No use of verified nutritional values is even discussed with respect to menu selection.

Cosentino fails to satisfy the deficiencies of Kolawa. Cosentino teaches a method of monitoring and transmitting physiological and wellness parameters of overweight/obese patients to a remote site where a *weight management professional or nutritionist* evaluates the parameters and can supervise and provide nutritional guidance to remotely located individuals. Cosentino

teaches a system which relays information to a user, wherein the user evaluates the information and makes decisions based upon the data. Cosentino neither teaches nor suggests a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional, as recited in the current claims.

Finally, Petot and Brown fail to remedy the above-identified deficiencies of Kolawa and Cosentino. Petot merely describes several systems used to assist in menu planning. Brown teaches a system and method to remotely monitor a patient, including a health care provider monitor and a remotely programmable patient apparatus. Neither reference teaches a *system* which establishes preselected nutritional criteria and suggests menu sets in accordance with the preselected nutritional criteria to a food service professional. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in independent claims 39 and 62. One of skill in the art would have no motivation to combine the references, as the combination clearly does not result in Applicants' presently claimed invention, as described above.

CONCLUSION

Applicants respectfully request that the application is in condition for allowance in light of the remarks made above. Reconsideration is respectfully requested at an early date.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the previously authorized deposit account.

Respectfully submitted,

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